

**CAPITAL PROJECTS ADVISORY REVIEW BOARD**  
**304 15<sup>th</sup> Avenue SW**  
**John A. Cherberg Building**  
**Conference Rooms B and C**  
**Olympia, Washington**  
**December 10, 2009**  
**9:00 AM**

**Draft Minutes**

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**MEMBERS PRESENT**

Daniel Absher	General Contractors
Norman Strong	Architects
Damon Smith	Engineers
Ed Kommers (Vice Chair)	Specialty Contractors
David D. Johnson	Construction Trades Labor
Mark Riker	Construction Trades Labor
Christopher Hirst	Private Industry
Olivia Yang	Higher Education
John Lynch	GA
Larry Byers	Insurance/Surety Industry
Rodney Eng	Cities
Gary Rowe	Counties
Robert Maruska	Ports
Rep. Bruce Dammeier	House (R)

**REPRESENTING**

**MEMBERS ABSENT**

Rep. Kathy Haigh	House (D)
Senator Rodney Tom	Senate (D)
Senator Dale Brandland	Senate (R)
Vince Campanella	General Contractors
Rocky Sharp	Specialty Contractors
Cynthia Cooper	OWMBE
John Ahlers	Private Industry
Vacant	Public Hospital Districts
Dan Vaught	School Districts

**STAFF & GUESTS**

Nancy Deakins, GA  
Searetha Kelly, GA  
Cheri Lindgren, Puget Sound Meeting Services  
Van Collins, AGC  
Paul Galeno, King County  
Phil Lovell, PRC  
Penny Koal, GA/PRC  
Robyn Hofstad, GA/PRC  
Larry Stevens, MCA, NECA  
Ashley Probart, AWC

Lisa Taylor, King County WTD  
Pete Dawson, Dawson Construction  
Dick Lutz, Centennial Construction  
Jim Borrow, KCDA  
Linneth Riley-Hall, City of Seattle/PRC  
Stan Bowman, AIA/WA  
Michael Mirra, Tacoma Housing Authority  
Daniel Watson, King County Housing Authority  
Jessica Fortescue, AWA  
Tom Tierney, Seattle Housing Authority

**Welcome & Introductions**

Chair Robert Maruska called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:10 a.m. Everyone present provided self-introductions. A meeting quorum was attained.

**Approve Agenda**

A discussion on the Governor's recommendation to eliminate CPARB was added to the agenda under CPARB priorities for legislative action.

**Larry Byers moved, seconded by Dave Johnson, to approve the agenda as amended. Motion carried.**

**Approve November 12, 2009 Meeting Minutes**

**Daniel Absher moved, seconded by Dave Johnson, to approve the November 12, 2009 minutes as presented. Motion carried.**

**Public Comments**

There were no public comments.

**Report from Project Review Committee**

Phil Lovell, Chair, Project Review Committee (PRC), reported that on December 3, a panel of the PRC was convened to consider a project application from Spokane Public Schools for the General Contractor/Construction Manager (GC/CM) process for improvements to Ferris High School. The PRC unanimously approved the project application.

Mr. Lovell reported members also discussed Design Build Operate and Maintain (DBOM) and two pilot projects through 2013. Members agreed a briefing to the PRC would be beneficial on guidelines and the process once a project application is submitted. All members would be involved in approving DBOM pilot projects. PRC members offered to modify or develop a supplement to the Design Build (DB) project application for DBOM.

Mr. Lovell reported the Associated General Contractors (AGC) Education Foundation is sponsoring a two-day GC/CM workshop on January 28 and 29, 2010, at the AGC Building Conference Center.

Discussion ensued on the PRC developing a modified DBOM application. Ed Kommers suggested that he and Olivia Yang provide a presentation on the process to the PRC and then pursue an application design at a future meeting or after an owner expresses interest in pursuing a DBOM pilot project.

Mr. Lovell said another option could include an owner submitting a DB project application with a supplement addressing DBOM guidelines.

The Board generally agreed to defer developing a DBOM application form until an owner expresses interest in moving forward with a DBOM project.

**Membership for CPARB and PRC**

Nancy Deakins advised that the Governor's Office placed a hold on four Board appointments pending a proposal to eliminate some state boards and commissions. Staff has not received information from the Association of Washington Public Hospital Districts (AWPHD) on identifying a candidate for the current vacancy.

Christy Trautman, a member of the PRC, is not seeking reappointment but will continue serving until she's replaced. Paul Powell, Jr., submitted an application for the vacant Ports position.

Members reviewed and discussed Mr. Powell's construction industry experience.

Chair Maruska endorsed the appointment of Mr. Powell to the PRC.

**Rodney Eng moved, seconded by Olivia Yang, to appoint Paul Powell to the PRC representing Ports. Motion carried.**

### **Task Force Status Reports**

#### ***Integrated Project Delivery/Best Value – Norman Strong and John Lynch***

Norman Strong reported the Integrated Project Delivery (IPD) and Best Value (BV) Task Force received feedback from members on the white paper presented at the November 12 meeting. The task force met on November 19. The white paper describes approaches that may be applicable to public projects through approved project delivery methods of Design Bid Build (DBB), GC/CM, and DB formats, provides a mechanism to inform public owners of alternative approaches already available, and addresses concerns. The approaches are based on existing Revised Code of Washington (RCW) statutes. The task force is asking that CPARB endorse the white paper and distribute it to public owners as soon as possible.

David Johnson commented that the paper doesn't discuss the positive aspects of having a responsible bidder on a project and reasons why the Board developed responsibility criteria, which are not intended to be onerous on public bodies. He suggested inserting a reference within item 1 under DBB on page 3 explaining desirable aspects of additional bidder responsibility criteria. The bullets appear to be negative.

Mr. Strong acknowledged the comment. If a term is already defined, a definition was not incorporated in the white paper. Items in bold typeface indicate what's currently allowed within the statute. Bulleted items reflect owner concerns expressed at task force meetings and are not intended as negative statements.

*Christopher Hirst arrived at the meeting.*

Rodney Eng said that current practices are intended to supplement bidder responsibility criteria. There's no intent to suggest that the minimum requirements outlined in 39.10.280 are onerous.

Olivia Yang offered to work with Mr. Johnson to draft language addressing the issue.

Gary Rowe proposed adding Municipal Research and Services Center (MRSC) to the recommended resources section on page 2, and providing the agency with a copy of the white paper.

Conversation followed on incorporating RCW references where appropriate. Mr. Strong advised that the task force discussed that idea and hesitated to do so in case references were missed. The intent of the white paper is to explain what current laws allow.

John Lynch added that the task force didn't want to produce a comprehensive and inclusive instruction/desk manual covering everything an owner needs to know. The paper points out concepts that are possible. Referencing statutes could be problematic.

**Norman Strong moved, seconded by Olivia Yang, to endorse and distribute the white paper to public owners using a variety of media to include modified language regarding post bidder issues that Mr. Johnson and Ms. Yang will develop. Motion carried.**

Mr. Absher suggested adding IPD/BV as a discussion topic for the AGC's GC/CM workshop on January 28 and 29, 2010.

Ms. Deakins indicated GA will post the final white paper on the Board's website and forward the link to members and stakeholders.

Mr. Lovell proposed integrating the white paper as an attachment to the student handbook for the workshop.

Mr. Strong suggested the task force continue discussing IPD and other aspects that might influence legislative change or new legislation during the 2011 session.

Mr. Lynch reported the task force will discuss BV in more detail and identify next steps at the January 2010 meeting.

#### **Association of Washington Housing Authorities – Presentation and Dialogue**

Tom Tierney, Executive Director, Seattle Housing Authority, and immediate past president of the Association of Washington Housing Authorities (AWHA), introduced Dan Watson, King County Housing Authority and Michael Mirra, Executive Director, Tacoma Housing Authority. AWA represents 40 housing authorities in Washington State. AWA is the instrument through which the federal government funds and regulates the development, acquisition, operation, and maintenance of housing for low-income individuals in 3,200 communities across the country. Primary funders and regulators include the Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA). Over the last 20 years, housing authorities have become more reliant on and are funded by federal low-income housing tax credits. Housing authorities construct housing and function as a general manager of a limited partnership where investors funding projects have some control and end up owning a 99% share in a project. Mr. Tierney reviewed how adherence to Washington's alternative public works (APW) contracting rules could create conflicts with federal regulations, programs, and alternative procurement programs:

- **Clash with “Section 3” hiring and contracting with disadvantaged firms.** HUD requires housing authorities to direct construction jobs to low income individuals living in its housing communities or jurisdiction to the greatest extent feasible. HUD also expects housing authorities to ensure contracting work is accessible to small disadvantaged firms. CPARB's emphasis on lowest responsive bid would not allow for those types of programs.
- **Advanced funding requirement.** For project approval, the CPARB requires developers to show “necessary and appropriate funding ... to complete the project.” The typical housing authority project, unlike other public builders, uses funding from multiple sources (mixed financing), many of which are not committed when the design effort begins.
- **Job order costing.** HUD allows housing authorities to use a competitive process to retain on-call contractors for indefinite quantity contracts for ongoing major maintenance functions including carpet installation, complex electrical and plumbing work, roofing, and excavation work. The AWA is not among the public bodies specifically authorized in RCW 39.10.420 to use this contracting method. It's not practical to conduct separate procurements for those contracts.

Mr. Tierney advised that state housing authorities have successfully used alternative procurement techniques for years with no problems. Housing authorities already operate under extensive federal regulation and oversight by other funders. Housing authorities apply competitively for state and city grant housing trust funds. He referred to the prior exemption from RCW 39.10 because housing authorities are not specifically mentioned. An Attorney General Opinion dated April 24, 2009 states that housing authority development projects should be subject to the CPARB's review. The AWA is seeking legislation restoring the prior understanding, and asks the Board to delay adding housing authorities until members can fully discern implications such legislation would have on the organization's critical federal low-income programs.

Michael Mirra reported the State Auditor's Office (SAO) informed AWA in November that beginning in 2010, it will examine how Section 3 and other federal required practices comply with CPARB rules and that the housing authority should expect findings. That is alarming and fortifies the agency's apprehension on the

issue. The AWHHA is also requesting the Board add “development” to the list of activities that are exempt. He pointed out some Board members suggested “construction and repair” rather than “development” may be more clarifying. Representative Haigh agreed to sponsor the housing authority’s bill and the organization will take its direction from her. He emphasized that project specific findings from the SAO will be problematic.

Ed Kommers commented on a productive working relationship between the CPARB and the AWHHA. The Board discussed adding housing authorities to the definition of public bodies in 39.10. However, there is no official proposal at this time. He asked whether the AWHHA will pursue the proposed legislation. Mr. Tierney advised that the legislation proposed by the AWHHA extends beyond the CPARB’s purview and would also clarify the use of APW processes to ensure the agency doesn’t incur findings from the SAO. He encouraged the Board to take some time to understand conflicts before acting to bring the housing authority under its jurisdiction.

Mr. Kommers asked whether the AWHHA would oppose CPARB legislation to add housing authorities to the definition of public bodies. Mr. Tierney affirmed the organization would oppose the action for the reasons stated.

Mr. Mirra indicated that the AWHHA believes the Attorney General (AG) is mistaken; however, the SAO will take its direction from the AG.

Mr. Eng inquired about whether the housing authority would still need to address the AG Opinion assuming no legislation is passed. Mr. Tierney responded that development, construction, and repair work is not listed in the housing authority’s enabling legislation exemption. An objective is drafting legislation stating development, construction, and repair work are listed in the enabling legislation, restoring the “status quo” that existed prior to the April 24 AG Opinion.

Mr. Johnson said it’s important for the Board to gain a better understanding of federal regulations which differ from state statute. A primary issue is prevailing wages. No one seems to know how the HUD prevailing wage, which is lower, was established or when it’s updated.

Mr. Tierney referred to establishing a task force to meet and discuss the issue. The CPARB is interested in transparency regarding housing authority contracts. The AWHHA could report to the Board on a regular basis. Specific to prevailing wage, HUD imposes its prevailing wage rate. It’s important for wages to be competitive.

Daniel Watson commented that the prevailing wage issue is complex.

Chair Maruska said it appears the AWHHA has many challenges to optimize funding and deliver products. He asked if other public bodies could benefit from using the alternate contracting methods and whether the AWHHA would participate in those discussions. Mr. Tierney replied that the housing authority welcomes the opportunity to discuss how things could work better. However, he’s not in a position to say the housing authority’s request for competitive proposals is better than APW processes currently in place, but that the practice is better for the housing authority. It allows the agency to implement programs required by HUD. He described how some elements of AWHHA’s competitive process are similar to BV.

Mr. Watson advised that a goal is creating economic opportunities for low-income housing residents. The housing authority works with private investors who invest in housing properties. The AWHHA is not really a public owner. The venture involves establishing a limited partnership or limited liability company that is managed by a housing authority, nonprofit, or for profit agency.

Members discussed Section 3 practice and awarding points for community benefit in a competitive procurement within the context of BV procurement, potential funding for housing authority capital projects over the next 12-24 months, and whether SAO findings jeopardize the organization's funding. Mr. Tierney reported that Seattle's capital program is approximately \$60 million annually. SAO findings could cause bond counsel to conclude that the housing authority's procurement process doesn't meet audit standards. He emphasized that all public sector agencies would like to avoid SAO findings.

Chair Maruska recessed the meeting from 10:24 a.m. to a.m. 10:40 for a break.

Chair Maruska thanked AWA representatives for the presentation.

Mr. Eng said that in light of the information presented by the AWA, perhaps the Board should not take further action on the proposed public body definition bill at this time. There may be good reasons why housing authorities should not be subject to RCW 39.10.

**Representative Dammeier moved, seconded by Dave Johnson, to table action on the public body definition bill proposal. Motion carried. Representative Dammeier abstained.**

**Task Force Status Reports, Continued**

**MC/CM and EC/CM – Daniel Absher**

Mr. Absher reviewed some sections of the Mechanical Contractor/Construction Manager (MC/CM) and Electrical Contractor/Construction Manager (EC/CM) alternate contract award process draft language proposal for the 2010 session:

- Upon approval of the public body, mechanical and electrical contractors could be selected early following selection of the GC/CM and become part of the pre-construction and construction teams.
- The GC/CM and public body must conduct a hearing and provide an opportunity for any interested party to submit written or verbal comments regarding the justification for utilizing the process, the evaluation criteria, and weights for criteria.
- The GC/CM and public body must issue a written final determination to all interested parties. All initial protests must be in writing and submitted to the public body rather than superior court.
- Sub-factors were deleted from item d under 4 to provide the GC/CM and public body some leeway to modify the most important sub-criteria. However, overall weighting must be established early.
- Public solicitation of proposals must include the bid instructions to be used by the MC/CM and/or ECCM finalists.
- Evaluation factors for selection of the MC/CM and/or EC/CM shall include the firm's approach to safety on the project and the firm's safety history. Additionally, the firm's fee and cost proposal can be evaluated.
- The Maximum Allowable Subcontract Cost (MASC) shall be used to establish a total subcontract cost for which the MC/CM and/or EC/CM shall provide a performance and payment bond. Total subcontract and negotiated MASC are defined.
- An independent audit paid for by the public body shall be conducted upon completion of the contract to confirm the proper accrual of costs as outlined in the contract. It's appropriate that the public body sponsor the cost of the audit to eliminate the notion that the GC/CM has control over the audit.
- If the subcontract work is completed for less than the MASC, any savings shall become part of the risk contingency included in the GC/CMs Maximum Allowable Construction Cost (MACC). The GC/CM can use the savings to pay for other cost overruns. Ultimately, overall savings revert back to the owner.

- A protest procedure for aggrieved bidders was added.

Mr. Lynch asked whether mechanical and/or electrical contractors bid on work that is self-performed. Mr. Absher advised that contractors will develop an estimate for the work, which is audited at the end.

Mr. Strong expressed support for the proposal as some owners are interested in assembling a team earlier in the design process. He asked whether the MC/CM and/or EC/CM will participate in the selection process with the GC/CM. Mr. Absher said nothing prohibits the MC/CM and/or EC/CM from participating in the selection process.

Mr. Eng added that the owner must approve the selection process. The engineer and architect could provide significant input.

Mr. Lovell supported the concept. One issue concerns double management coverage between the GC/CM and separate mechanical and electrical CMs. Mr. Absher responded that the overall cost was discussed and the process can be utilized if the value of the subcontract exceeds \$3 million. He pointed out that an owner having the ability to assemble a team earlier will lead to a better process, significant benefits, and more efficient buildings.

Mr. Kommers reported the Mechanical and Electrical Contractors Associations support the proposal provided the CPARB continues to exist and provides a forum to vet APW issues.

**Daniel Absher moved, seconded by Ed Kommers, to support the draft legislation and introduce it during the 2010 legislative session.**

Mr. Lynch said he also supports the concept and would like an opportunity to review the final bill version as he has several unanswered questions.

Mr. Absher asked members to forward questions to him for language refinement purposes.

Additional feedback from members and the public included:

- Forward the proposal to Marsha Reilly to draft a bill and identify a bill sponsor(s).
- Owners should have a chance to review the final draft and provide comments.
- Retain the ability for the CPARB to support and promote the legislation.
- Mr. Lynch's concerns could be described in a separate document.
- A concern is that the CPARB does not meet again until February 2010. A mechanism to address substantial changes to the proposal is unclear. Developing a bill supplement that is non-legislative in nature rather than trying to incorporate substantial changes is another option.
- Another option is providing the task force with the ability to make minor changes and/or clarifications before the bill is dropped.
- Define the purpose and goal of an audit and how to protect the owner.
- Revise the last sentence in item 10 to read, "An independent audit, paid for by the public body, the scope and detail of which shall be agreed to by the public owner and paid for by the public owner, shall be conducted ..."
- Subsection 8 includes language about owner control. The public owner must approve the final negotiated MASC, which includes reconciling cost estimates. The public owner can establish audit parameters.

- The proper accrual of costs as outlined in the contract could be included in the owner's agreement with the GC/CM.
- General contractors support a mandatory rather than discretionary independent audit.
- The tool will allow owners to bring the team together and work efficiently, which could lead to reduced costs.

Mr. Absher provided additional information on the purpose of an audit.

Mr. Lynch commented that the feedback was helpful and he's comfortable with the proposal as presented.

Members discussed certain aspects of the draft legislation.

**Motion carried unanimously.**

Mr. Absher and Marsha Reilly, House Committee staff, will work together on developing a final legislative draft, which will be forwarded to Ms. Deakins for posting and distribution.

Representative Dammeier outlined challenges during the 2010 legislative session. Pursuing a bill could be problematic. He encouraged the Board to submit the bill for consideration as it illustrates the value of the CPARB.

**CPARB Priorities for Legislative Action**

***Design Build Definition for Modular Bill Proposal – CPARB Approved May 2009***

Mr. Kommers reported the Design Build definition for a modular amendment is an important clarification and could be included with CPARB sponsored legislation rather than creating a stand-alone bill.

***Draft JOC Contract Bill Proposal***

Ms. Reilly said one concern with the draft job order contract (JOC) amendment is that one contract for each public request for proposal (RFP) could preclude a public body from soliciting for more than one JOC if authorized to do so. Mr. Eng referred to the Board's interest in one RFP for each JOC contract awarded rather than bundling JOCs. However, it appears the issue is not a high priority at this time.

Mr. Absher proposed adding the Design Build definition for modular and the JOC contract amendments to the Board's 2010 work plan for administrative review and clarification.

**John Lynch moved, seconded by Daniel Absher, to consider the Design Build definition for modular and the JOC contract amendment as part of a potential cleanup bill during the 2011 session and that the CPARB not utilize this year's short legislative session for those issues at this time. Motion carried.**

***Proposed Elimination of CPARB***

Chair Maruska advised that the CPARB is one of 70 state board and commissions proposed for elimination during the 2010 session. Members could consider taking a position to present to the Legislature when it considers the proposed bill. Ideas include developing methodologies enabling the CPARB to become self-supporting such as assessing an application fee to owners for project and certification applications, removing the sunset provision, and reconsidering data collection efforts. There are options that could help the state financially while promoting the function and sustainability of the Board.

Ms. Deakins provided a copy of the CPARB's budget.



Mr. Eng asked whether suspending the Board for the next year or two and retaining critical components including data collection and the PRC would assist the budget.

Ms. Yang said that the task forces could continue meeting.

Representative Dammeier reported 13 of 450 state boards and commissions were eliminated during the 2009 session. The Legislature discussed developing criteria to evaluate retaining boards and commissions. It's possible the Governor would endorse the CPARB because it evaluates innovative methods for government to do business. Highlighting the value and benefit of the Board to public owners and citizens rather than focusing on reducing costs is a good approach.

**Ashley Probart, Association of Washington Cities (AWC)**, said it's important to articulate what's gained, how state agencies and others benefit, and what savings can be achieved elsewhere by retaining the Board.

Additional comments from members and the public are summarized below:

- Draft a letter to the Legislature outlining the benefits of the Board and highlighting significant member in-kind contributions. Data collection for major state and local public works projects is an important effort.
- Taking a proactive rather than defensive approach might be appropriate. The Board could prepare a white paper, which is more comprehensive than a letter.
- Ms. Deakins advised that the Office of Financial Management (OFM) asked GA to draft a one-page letter regarding the CPARB. She presented a copy of the letter describing the Board's duties, membership, and CPARB sponsored legislation.
- Describe the impact and savings achieved through the GC/CM delivery methodology on the capital budget. A question is whether it makes more sense to fund data collection from the capital budget.
- Mr. Lynch reported that OFM also requested GA estimate what changes in statute are required if the Board is eliminated, which includes the PRC and sunset provision.
- The CPARB is evaluating future trends and strives to save money, time, and effort for publicly funded projects through new construction methods.
- Incorporating examples or antidotal stories into a letter or white paper illustrating how the GC/CM process works and benefits achieved could also help. Mr. Absher offered to provide examples and volunteered to testify. Ron English with the Seattle School District also has compelling stories on how the GC/CM process helped resolve cost issues.
- It's important to tie the CPARB to the process.
- The Board should be prepared to answer, "What would be jeopardized by suspending CPARB for the next 6-24 months?"
- Use the term, "evidence based" in the letter to the Legislature.

Ms. Reilly advised that another question is who would do the work of the Board if it's eliminated. It doesn't appear staff time would be saved if CPARB activities were moved to GA.

Representative Dammeier recommended the Board forward a letter to the Legislature initially and that members and customers testify before appropriate legislative committees. The letter should highlight accomplishments and future work. The deadline to drop bills is the first week in January 2010.

Mr. Absher volunteered to work with GA staff and draft a summary document outlining benefits not listed in the GC/CM legislation.

### **2010 Work Plan**

- Design Build definition for modular proposal – cleanup
- Draft JOC bill proposal – cleanup
- Continue the IPD/BV task force

Mr. Absher suggested establishing a cleanup task force to meet in late spring/early summer. The Board could establish the task force at its February meeting.

*John Lynch, Gary Rowe, and Norman Strong left the meeting.*

### **Staff Updates**

Ms. Deakins reported the annual JOC public body surveys have been submitted. Raw data will be forwarded to the Office of Women and Minority Business Enterprises (OWMBE) for verification of certified firms. A summary of the data will be presented at the February meeting.

Members discussed whether to continue spending resources on data collection and analysis. The Board agreed to proceed with data collection at this time.

### **Set Next Meeting Agenda**

- JOC report 2009
- IPD/BV task force report
- Status of the MC/CM and EC/CM bill and additional legislative actions
- Standing agenda items

Mr. Absher distributed copies of the Snohomish County Council's ordinance on purchases and contracts and revising responsible bidder and apprentice utilization requirements. The AGC opposes the ordinance.

The Board discussed protocol for members testifying at legislative committee hearings. Mr. Kommers indicated he'll follow up with individual members.

### **Adjournment**

With there being no further business, Chair Maruska adjourned the meeting at 12:20 p.m.

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Robert Maruska, CPARB Chair

Prepared by Cheri Lindgren, Recording Secretary  
Puget Sound Meeting Services